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SENATE

{ REPORT
{ No. 1234

ADJUSTMENT OF IRRIGATION CHARGES, FLATHEAD INDIAN IRRIGATION PROJECT, MONTANA

MAY 4, 1948.—Ordered to be printed

Mr. BUTLER, from the Committee on Interior and Insular Affairs,
submitted the following

R E P O R T

[To accompany H. R. 5669]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 5669) providing for the adjustment of irrigation charges on the Flathead Indian irrigation project, and for other purposes, having considered the same, report thereon with the recommendation that it do pass with the following amendment:

On page 11, line 10, strike out all after the colon and change the colon to a period.

On page 11, strike out all of lines 12 and 13:

In striking this proviso it was the expressed intent of the members of the committee that this action should not be construed to be prejudicial to any alleged Indian claims or demands, nor should this statement in the report be construed as a recognition in any way or manner that there are any valid claims by said Indians for water rights involved in the project.

This bill has been considered by the Committee on Public Lands of the House of Representatives; on April 7, 1948, that committee submitted its report (H. Rept. 1691) to the House, recommending its passage; and on April 20, 1948, it passed the House.

The facts concerning this proposed legislation are fully set forth in said House Report No. 1691, a copy of which is attached hereto and made a part of this report, as follows:

H. Rept. No. 1691, 80th Cong., 2d sess.

The Committee on Public Lands, to whom was referred the bill (H. R. 5669) to provide for adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 11, line 1, after the word "all", insert the word "of".

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On page 11, line 25, after the word "made", insert the word "in".

On page 12, line 19, after the word "contracts", insert the following: "to make such determinations, to effect such adjustments in project accounts,".

The Flathead irrigation project lies in what is known as the lower Flathead Valley within the boundaries of the Flathead Indian Reservation in the Lake, Sanders, and Missoula Counties in northwestern Montana. The area served by the project generally is bounded on the north by the Flathead Lake, on the east by the Mission Range, on the west by the Cabinet Range of mountains, and on the south by the Nine-Mile Divide.

The project consists of two main features: The irrigation system which is designed to provide water for some 138,000 acres, in which about \$10,000,000 has been invested, and a power distribution system and small generating plant in which approximately \$1,000,000 has been invested. The irrigation system consists of some six main canals totaling 60 miles, 910 miles of laterals, and three pumping plants with lifts of 335 feet, 43 feet, and 79 feet. The power system consists of 410 miles of distribution lines, a 320-watt generating system, and several substations. The system serves some 3,700 customers and there is now on file between five and six hundred applications for connection by small users.

The purpose of this bill is to revise the legislation under which the Flathead irrigation project operates. The present authorization law is contained in an amendment to the Appropriation Act of May 10, 1926. We are asked for new legislation that will extend the time for repayment, authorize new supplemental repayment contracts, and permit the construction of additions and improvements to the irrigation system and the power system so that new customers may be connected and present ones better served. The new legislation provides for the reimbursement of the Federal Government of funds that have been advanced for both the power and irrigation system and for the write-off of certain delinquent accounts that have been found to be uncollectible.

Twice Congress has extended moratoriums for repayments to the Federal Government because the legislation needed for the system to operate has not been provided. The construction of the Hungry Horse Dam above this project has brought a large influx of new people into this area resulting in an increase of population that has made necessary not only additional electrical facilities but additional water for new homes and farms.

Four days of hearings were held on this legislation in addition to hearings held a year ago at which time it was found that the subcommittee did not have necessary information to act. Therefore, the Congress granted a moratorium on payments and requested that facts needed in order to enact the legislation be provided this session of Congress.

The hearings have been held; testimony was given by the Bureau of Indian Affairs, representatives of the tribes, and representatives of the irrigation districts. All were given complete opportunity to present their thoughts and have worked hard and long in order to reach a compromise that would be satisfactory to the Government, to the water users, and to the Indians concerned. We believe the resulting bill has attained those ends. On the opening day of the hearing, Mr. Oscar L. Chapman, Under Secretary of the Interior, submitted a letter to the committee accompanied by a new draft of the bill. This letter stated in part:

"I suggest that the bill be amended by striking out all after the enacting clause and that the language of the attached draft of the bill be submitted therefor. If so amended, I recommend that the bill be enacted."

This new draft was the one studied by the committee. At the end of the hearings it was found that it did not meet the needs of this irrigation project nor conform to all the desires of the Department of the Interior. Those interested, that is, the Bureau of Indian Affairs, the representatives of the irrigation districts, and the representatives of the tribes thereon, met and have drafted a new version of this bill which is the one that is presently submitted and recommended for passage.

DESCRIPTION OF THE BILL

Section 1: This is a directive to apply the provisions of this bill.

Section 2: (a) Allocates the costs between the divisions of the project.

(b) Provides that revenues hereafter accruing will be used to operate and maintain the system and establish necessary revenues under section 3 of Public Law 647.

(c) The deferred costs on the Camas division are here interpreted to mean the difference between the per acre costs of the Mission Valley division and the Camas division multiplied by the total acreage of the Camas division. The excess costs of the Camas division are estimated to be \$566,178 as of June 30, 1948. Assuming

that available revenues of that date are \$981,600, the excess Camas costs could be liquidated and leave a balance of \$415,422 to be applied to—

(d) The Mission Valley division, the Camas division, and the Joeko division costs of construction, approximately \$9,317,800. The balance to be liquidated out of future revenues and construction assessments is \$8,902,400 with some \$7,848,684 being irrigation costs, which will be—

(e) Spread over a period of 50 years for an annual assessment of some \$157,000. Future irrigation costs will be liquidated by increasing the amount or number of these annual installments.

(f) The remaining unliquidated power costs as of June 30, 1948, of approximately \$1,054,000 are also to be scheduled over a period of 50 years, or approximately \$21,000 a year. The remaining unliquidated power costs above, and those in the future, are both to be liquidated out of revenues of the power system and will not be assessed against the landowners.

(g) Provides the basis upon which rates for electric energy sold through the power project system shall be fixed. The first part of this subsection provides that the power rates shall produce net revenues sufficient to repay all construction costs incurred on account of the power system of the project.

The language in this subsection "for the purpose of reducing the irrigation system construction costs chargeable against the lands embraced within the project and of insuring the carrying out of the intent and purpose of legislation and repayment contracts applicable to the project"—is designed to make plain the intention of the committee that the net profit provided for in the succeeding portions of this subsection is intended to be used for the purpose of repaying a substantial portion of the reimbursable irrigation construction costs of the project.

Rates for power sold by the project shall be the lowest which will produce net revenues to—

1. Meet the \$21,000 plus power system construction annual installments and for the purpose of reducing the \$157,000 plus irrigation system construction cost.

2. Yield a reasonable return on the unliquidated power system costs. This should be about 3 to 3½ percent and means from \$30,000 to \$35,000 now, and probably will grow to \$60,000 to \$70,000 within the next 5 years.

3. Yield a reasonable return on the value of the project's interest or equity in the power development at Kerr Dam. This is estimated to be \$62,500 for 1948, but will vary with changing load factors and use of the project pumps.

(h) Priority of application of future net revenues are provided as follows:

(1) To liquidate all matured installments for construction costs of the power system.

(2) To liquidate all matured installments for construction costs of the irrigation system.

(3) To liquidate unmatured installments of the power system.

(4) To liquidate unmatured installments of the irrigation system.

(5) To liquidate construction costs charged against Indian-owned lands the collection of which is deferred under the act of July 1, 1932.

(6) To liquidate the annual operation and maintenance cost of the irrigation system.

(i) Application of proportionate share of net revenues accruing to Indian lands and lands on which part of construction costs have been made shall reduce the annual irrigation operation and maintenance assessment.

(j) The water users will pay the balance of the annual construction assessment not liquidated from power revenues. The time required to fix, levy, and collect shall be considered in applying annual revenues to assessments.

Section 3: Repayment adjustments provided for in sections 1 and 2 shall not become effective until supplemental contracts contained in the terms and conditions described are concluded.

Section 4 has to do with uncollectible accounts consisting of two items: First, \$40,549.89 of operation and maintenance charges, and, second, \$2,195.16 electric energy charges. Forty thousand five hundred and forty-nine dollars and eighty-nine cents of unpaid assessments which are unrecoverable were incurred up to May 10, 1926, and ought to be canceled. They are not a charge against the system but are personal obligations. This charge is owed by people who in most cases have long since left the project. The cost of collecting over the years would probably fully equal any money collected. Good business judgment indicates this old failure of the Government to make collections should not be a continued harassment of the districts and should be written off. The \$2,195.16 is an energy charge against customers who are dead, or who have left and this item is not collectible and should therefore be written off.

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Section 5 authorizes appropriation of the following amounts:

(a) Two items of \$64,161.18 and \$409.38 with interest for unreimbursed balances spent for construction costs out of tribal trust funds. These amounts will be added to construction and the principal amount will be reimbursable to the United States.

(b) \$400,000 to be deposited into the United States Treasury to the credit of the Confederated Salish and Kootenai Tribes of which \$200,000 is for settlements of all claims for the use of tribal lands for the physical works and facilities to date, and the second \$200,000 is for a permanent easement for the future use of said land.

(c) \$1,000,000 for future construction of irrigation and power system.

(d) Expenditures authorized by this section shall not be made until the supplemental contracts are concluded.

Section 6 provides that not to exceed \$75,000 of the power revenues each year shall be available for improvement and extensions of the power system.

Section 7 authorizes the Secretary of the Interior to issue public notice fixing construction costs, apportioning construction charges, enter into contracts and prescribe regulations pursuant to this act.

Section 8 is the repeal clause.

Attached hereto and made a part of this report are two statements signed by representatives of the irrigation districts requesting that favorable consideration be given this legislation.

Also attached is a statement by the attorney for the Confederated Salish and Kootenai Tribes of Indians approving this legislation as recommended in this report.

Lastly is a letter from the Secretary of the Interior addressed to the chairman of the Committee on Public Lands recommending the enactment of a revised draft of H. R. 4736. Upon its receipt, it was introduced as H. R. 5669 and that favorable recommendation of the Department is made a part of this report.

WASHINGTON, D. C., March 1, 1948.

Re H. R. 4736, Eightieth Congress, first session.

Hon. WESLEY D'EWART,

*Chairman, Subcommittee on Indian Affairs, Committee on Public Lands,
House of Representatives, Washington 25, D. C.*

MY DEAR MR. D'EWART: I have assisted with the redraft of the above-numbered bill, said draft being dated as of February 28, 1948, and am acquainted with the contents of the redraft of said bill and recommend that H. R. 4736 be amended accordingly, or else introduced as a "clean bill," and that the same be enacted into law.

Respectfully yours,

LLOYD I. WALLACE,

Attorney for Mission and Jocko Valley Irrigation Districts, Montana.

WASHINGTON, D. C., February 29, 1948.

Hon. WESLEY D'EWART, M. C.,

Washington, D. C.

MY DEAR MR. D'EWART: In the matter of the redraft of the substitute for H. R. 4736 prepared by attorneys in the Department of the Interior and which is identified as the draft of February 28: This draft, while of considerable length and of rather intricate phrasing, represents the sincere efforts of very capable men in an attempt to deal, in most complete detail, with a situation which is involved in confusing complexities.

While the entire matter might have been dealt with in a very concise and simply constructed bill, leaving the details to be taken care of through broad interpretation, the Department men were anxious to be relieved of the responsibility of making the required broad interpretation. It became necessary then to cooperate and compromise in order to have agreement amongst the several interests involved.

Many conferences have been had, and many experimental drafts of proposed legislation have been considered, during the last 2 months. Both extremes were in evidence at the hearings held by your committee 2 weeks ago. It is likely that the substitute draft referred to above has in it the entire substance of those

conferences and those drafts. That seems to be the normal process in developing a good piece of legislation.

I am in fullest accord with the substitute draft of the Department as of February 28, and sincerely hope it might be approved by the Congress without essential change.

Yours respectfully,

D. A. DELLWO,
Secretary, Flathead Irrigation District.

WASHINGTON 6, D. C., March 1, 1948.

Re H. R. 4736, Eightieth Congress, First Session.

HON. WESLEY D'EWART,
House of Representatives,
Washington 25, D. C.

MY DEAR MR. D'EWART: This letter refers to the draft of bill submitted by the Department of the Interior at the hearings on H. R. 4736 and H. R. 658, Eightieth Congress, First Session, and supplements the joint letter of February 23 and 25, 1948, sent to you by Messrs. Wallace, Dellwo, and myself.

The Department of the Interior has wholly redrawn section 5 as was jointly submitted to you by Messrs. Wallace, Dellwo, and me. As we had drawn it, it copied (with Mr. Flickinger's suggested amendment to the first proviso and some language clarifying the intent of the parties in suggesting the language) the similar provision of H. R. 658. While I felt, and still feel, that the language of section 5 as submitted to you properly protected all interests involved, including the interests of the United States, Mr. Flickinger, following his return to Washington, Thursday, February 26, completely redrafted the section and put it in a new arrangement and with new words. This was submitted to Messrs. Wallace, Dellwo, and me late the afternoon of Friday, February 27, and was the subject of a conference rather late into Friday evening. On the basis of the discussions of the new language at that conference, some changes were effected in Mr. Flickinger's draft. That draft I discussed with George M. Tunison, Esq. (counsel for the Confederated Salish and Kootenai Tribes), my principal in connection with these hearings. On the basis of a telephone conference he had with Messrs. Slaughter and Flickinger of the Department of the Interior, he directed me on Saturday afternoon to consent, on behalf of the tribes, to the altering of section 5 as contained in the draft sent to you under date of February 23, 1948, so that it shall read as follows:

"Sec. 5. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the following sums, for the following purposes, to be reimbursed to the United States as hereinafter provided:

"(a) The sum of \$64,161.18, with interest thereon at the rate of 4 per centum per annum from May 18, 1916, and the sum of \$409.38, with interest thereon at the same rate from December 1, 1925, to be used to repay the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana, the balance remaining due them under the act of May 18, 1916 (39 Stat. 123, 141). The aggregate principal amount of \$64,570.56 so repaid shall be added to the construction costs of the project and shall be reimbursable.

"(b) The sum of \$400,000 to be deposited in the United States Treasury to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana, of which sum one-half shall be in full settlement of all claims of said tribes on account of the past use of tribal lands for the physical works and facilities of the irrigation and power systems of the project, or for wildlife refuges; and the other one-half shall be in full payment to said tribes for a permanent easement to the United States, its grantees and assigns, for the continuation of any and all the foregoing uses, whether heretofore or hereafter initiated, upon the tribal lands now used or reserved for the foregoing purposes. The said tribes shall have the right to use such tribal lands, and to grant leases or concessions thereon, for any and all purposes not inconsistent with such permanent easement. The amount deposited in the Treasury pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable: *Provided*, That it is not the intent of this act to settle any claims said tribes may have for appropriations of water, nor except as specifically provided by this act.

"(c) The sum of \$1,000,000 to continue the construction of the irrigation and power systems of the project. Amounts expended pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

"(d) No expenditure shall be made from any appropriation granted under the authorizations contained in this section until the repayment of all reimbursable construction costs incurred through such expenditure has been secured by contracts conforming to the requirements of section 3 of this act."

Accordingly, I wish hereby to record the consent and support of the Confederated Salish and Kootenai Tribes of the Flathead Reservation to the draft of bill (with amendments heretofore effected pursuant to the conferences of the parties and with you, including the language of section 5 as redrafted, above set out).

Very respectfully yours,

JOHN W. CRAGUN,
Attorney for Confederated Salish and Kootenai Tribes.

THE SECRETARY OF THE INTERIOR,
Washington, March 3, 1948.

HON. RICHARD J. WELCH,
*Chairman, Committee on Public Lands,
House of Representatives.*

MY DEAR MR. WELCH: Reference is made to H. R. 4736, a bill to provide for the adjustment of repayment contracts with respect to lands within the Flathead irrigation project, Montana, and for other purposes, concerning which a report was submitted to your committee by this Department on February 16.

At the conclusion of the hearings on H. R. 4736 before the Subcommittee on Indian Affairs of your committee, Representative D'Ewart, the chairman of the subcommittee, requested this Department to confer with the representatives of the Flathead, Mission, and Jocko Valley irrigation districts, and with the representatives of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, for the purpose of working out a revision of the bill that would provide an equitable and practical adjustment of all of the interests concerned. Pursuant to this request conferences have been held with these representatives, and a revision of the bill has been prepared which is understood to be agreeable to them. A copy of the suggested revision is attached. I believe that it embodies fair and workable solutions of the problems involved, and I recommend that it be enacted.

The main purpose of the proposed legislation is to establish repayment procedures for the Flathead Indian irrigation project which will insure the ultimate recovery by the United States of the whole amount of its reimbursable investment in the construction of the irrigation and power systems of the project. This investment now amounts to almost \$10,000,000. The revised draft would accomplish this result by providing for power revenues from the project sufficient to repay all of the construction costs incurred on account of the power system, and sufficient to yield a profit, in the amounts specified in the latter part of subsection 2 (g) of the draft, to be used in liquidating a substantial portion of the construction costs incurred on account of the irrigation system. Existing law with respect to this project provides that all returns from the power system, over and above the costs thereof, shall be applied to reducing the costs incurred in connection with the irrigation system, but does not provide a standard to govern the fixing of the power rates. The portion of subsection 2 (g) which prescribes the basis for determining the profit components of the power rates is prefaced in the revised draft by the words "for the purpose of reducing the irrigation system construction costs chargeable against the lands embraced within the project and of insuring the carrying out of the intent and purpose of legislation and repayment contracts applicable to the project." These words are designed to give expression to the principle, without which recovery of the existing investment of the United States in the project would be impossible, that the profits obtained through maintaining power rates at the levels prescribed by the succeeding clauses of subsection 2 (g) are to be devoted to the purpose of assisting the water users in repaying the construction costs of the irrigation system, as contemplated by the existing statutes and repayment contracts applicable to the project. Under the revised draft, all of the reimbursable costs incurred in connection with the irrigation system which are not liquidated out of power revenues are to be paid through assessments against the lands of the water users, and the existing lien of the United States against these lands is expressly continued in effect by the draft as security for the payment of all such costs. It is the considered opinion of this Department that the repayment provisions incorporated in the

revised draft will result in the return to the United States of its total reimbursable investment in the project within the period of 50 years prescribed in the draft.

The enclosed revision follows the general lines of the proposed substitute for H. R. 4736 which accompanied this Department's report of February 16, but incorporates a number of clarifying and perfecting amendments. The only major substantive change is the addition of subsection 5 (b) which would authorize the payment of \$400,000 to the Confederated Salish and Kootenai Tribes of the Flathead Reservation. One-half of this sum is to be in full settlement of the outstanding claims of these Indians for the use of tribal lands for reservoirs, pumping plants, and other physical works and facilities of the irrigation or power systems of the project, and for wildlife refuges. The other one-half is to be in full payment to these Indians for a permanent easement over the tribal lands now used or reserved for the foregoing purposes, under which the United States would be authorized to continue and expand such uses within the boundaries of the sites now so used or reserved. The whole sum of \$400,000 is to be added to the reimbursable construction costs of the project, and is to be repaid to the United States by the water users and power users of the project. Adoption of subsection 5 (b) would resolve a long-standing controversy in a way mutually agreeable to both the Indians and the irrigation districts concerned, and would facilitate the efficient operation of the project.

The revised draft, in common with its predecessor, also contains various provisions with respect to the financing of new construction and the adjustment of existing obligations which will assist in placing the project on a sound economic footing. All of these expenditures and adjustments are to be, or have been, added to the reimbursable cost of the project and are to be, or have been, repaid to the United States by the water and power users, with two justifiable exceptions. One of the exceptions consists in the cancellation by section 4 of approximately \$40,000 of unpaid operation and maintenance assessments which accrued at a time when the law did not provide adequate remedies for the enforcement of such assessments and which, because of this defect in the law, are now actually uncollectible. The other consists in the authorization by subsection 5 (a) of a payment of approximately \$80,000 to the Flathead Indians as interest upon tribal funds, used for the construction of the project, which under the act of May 18, 1916 (39 Stat. 123, 141), should have been returned to the Indians many years ago, but which a recent investigation has shown were never actually refunded to the Indians. Since both of these items originated in transactions over which the irrigation districts of the project had no control, and from which they have derived no benefit, it would be inequitable to include these items in the reimbursable costs to be repaid by the water and power users of the project.

I believe the revised draft of H. R. 4736, if enacted by the Congress, would place the Flathead Indian irrigation project on a basis where it will be able to repay to the United States, not only the annual operation and maintenance costs of the irrigation and power systems, but also all the reimbursable costs incurred for the construction of these systems; and on a basis where it will be able to provide efficient service to the water and power users, both Indian and non-Indian, who are dependent upon the project. For these reasons I recommend early and favorable consideration of the enclosed draft by the Congress.

In view of my understanding that you desire an immediate report, this letter is not being submitted to the Bureau of the Budget for consideration. Therefore no commitment can be made concerning the relationship of the foregoing views to the program of the President.

Sincerely yours,

OSCAR L. CHAPMAN,
Under Secretary of the Interior.

